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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOANNA FERGUSON, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. **DIVERSIFIED CONSULTANTS, INC.; LIVEVOX, INC.,** Defendants.	**Case No.:** **[CLASS ACTION]** **COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF PURSUANT TO THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, ET SEQ.; NRS 598 ET SEQ.; AND NRS 41.600** **JURY TRIAL DEMANDED**

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INTRODUCTION

1. JOANNA FERGUSON ("Plaintiff") brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of DIVERSIFIED CONSULTANTS, INC. ("DCI") and LIVEVOX, INC. ("LIVEVOX") (jointly as "Defendants") in negligently and/or intentionally contacting Plaintiff on Plaintiff's cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.
2. The actions alleged herein to have been undertaken by the Defendants were undertaken by each defendant individually, were actions that each defendant caused to occur, were actions that each defendant authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions each defendant assisted, participated in, or otherwise encouraged, and are actions for which each defendant is liable. Each defendant aided and abetted the actions of the defendants set forth below, in that each defendant had knowledge of those actions, provided assistance and benefited from those actions, in whole or in part. Each of the defendants was the agent of each of

the remaining defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and with the permission and consent of other defendants.

3. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. "Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

4. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that "[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

> [b]anning such *automated* or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12 (emphasis added); *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's purpose).

5. Congress also specifically found that "the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call...." Id. at §§ 12-13. *See also*, *Mims*, 132 S. Ct. at 744.

6. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls similar to this one:

> The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012). Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

8. Venue is proper in the United States District Court for the District of Nevada pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of Clark County, the State of Nevada and Defendants are subject to personal jurisdiction in the County of Clark, State of Nevada as they conduct business

there, and the conduct giving rise to this action took place in Nevada. Further, Defendant DCI is registered with the Nevada Secretary of State, with a registered agent of service in Henderson, Nevada.

PARTIES

9. Plaintiff is, and at all times mentioned herein was, a citizen and resident of Clark County, State of Nevada. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (39).

10. Plaintiff is informed and believes, and thereon alleges, that Defendant DCI is, and at all times mentioned herein was, a corporation incorporated in Jacksonville, Florida, doing business as a foreign corporation in Nevada.

11. Plaintiff is informed and believes, and thereon alleges, that Defendant LIVEVOX is, and at all times mentioned herein was, a corporation, with headquarters in San Francisco, California.

12. Defendants are and at all times mentioned herein were, corporations and are "persons," as defined by 47 U.S.C. § 153 (39).

13. Defendant DCI is a national corporation, offering debt collection services for alleged consumer debts in various industries, including but not limited to wireless, cable, and utility.

14. Defendant LIVEVOX is a national corporation, and is the leading provider of cloud contact center solutions, offering an integrated hosted predictive dialer, ACD, IVR, call recording and business analytics suite.

FACTUAL ALLEGATIONS

15. On information and belief, DCI "partners with LiveVox for its dialing needs," when making collection calls to alleged debtors. LiveVox is the "leading provider of predictive dialing solutions to the collection industry."

16. Plaintiff is informed and believes, and thereon alleges, that LiveVox was acting as the agent for DCI, the principal, at all times relevant. In this capacity, Plaintiff is informed and believes, and thereon alleges, that LiveVox was authorized to act on behalf of DCI to place collection calls using a predictive dialer to alleged debtors such as Plaintiff.

17. At a minimum, LiveVox maintained apparent authority to act on behalf of DCI, since Plaintiff reasonably believes that an agency relationship existed with DCI and this reasonable belief is traceable to a manifestation of DCI.

18. Defendant DCI knowingly accepted the benefits of the TCPA violations alleged herein by receiving compensation from alleged debts after being connected to calls LiveVox, Defendant's agent, made on behalf of DCI.

19. Sometime on or around early, 2012, DCI acquired, purchased, or was assigned an alleged debt.

20. Plaintiff takes no position as to the validity of the alleged debt for which Defendants called Plaintiff.

21. Sometime late 2011 or early 2012, Defendants or its agent/s began contacting Plaintiff on her cellular telephone number ending in 1273 using

an artificial or prerecorded voice via an automatic telephone dialing system ("ATDS") as defined by 47 U.S.C. § 227(a)(1), as prohibited by 47 U.S.C. § 227(b)(1)(A). The calls continued through 2013.

22. This ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

23. On or about May 29, 2012, Defendants used an ATDS to contact Plaintiff on Plaintiff's cellular telephone number ending in 1273.

24. Defendants repeatedly contacted Plaintiff on Plaintiff's cellular telephone using an "artificial or prerecorded voice" as defined by 47 U.S.C § 227(b)(1)(A).

25. Defendants contacted Plaintiff on her cellular telephone no less than 36 times between 2012 and 2013.

26. At no time did Plaintiff enter into a business relationship with Defendants.

27. At no time did Plaintiff provide her cellular phone number to Defendants through any medium.

28. Upon information and belief, the purpose of these calls from Defendants or its agent/s was to collect an alleged debt incurred by someone other than Plaintiff.

29. The telephone number Defendants or its agent/s called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

30. These telephone calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

31. Plaintiff did not provide Defendant prior express consent to receive calls to her cellular telephone utilizing an ATDS, pursuant to 47 U.S.C. § 227 (b)(1)(A).

32. These telephone calls by Defendant or its agent(s), violated 47 U.S.C. § 227(b)(1).

33. Through this conduct, Defendants violated NRS 598.0923(3) by violating the TCPA, a federal statute, in attempt to collect on an alleged debt, which was owed for goods and/or services.

34. Through this conduct, Defendants committed "consumer fraud" as defined in NRS 41.600(2)(e).

Class Action Allegations

35. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated (the "Class").

36. Plaintiff represents, and is a member of the Class, consisting of:

> All persons within the United States who received any telephone call/s from Defendants or its agent/s and/or employee/s to said person's cellular telephone made through the use of any automatic telephone dialing system or with an artificial or prerecorded voice within the four years prior to the filling of the Complaint.

37. Plaintiff represents, and is a member of the Sub-Class (Sub-Class 1), consisting of:

> All persons residing within Nevada who received any telephone call/s from Defendants or its agent/s and/or employee/s to said person's cellular telephone made through the use of any automatic telephone dialing system or with an artificial or prerecorded voice within the four years prior to the filling of the Complaint.

38. Defendants and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the Class members number in the tens of thousands, if not more. This matter should therefore be certified as a Class action to assist in the expeditious litigation of this matter.

39. Plaintiff and members of the Class were harmed by the acts of Defendant in at least the following ways: Defendants, either directly or through its agents, illegally contacted Plaintiff and the Class members via their cellular telephones by using an ATDS and/or artificial or prerecorded voice, thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular telephone time for which Plaintiff and the Class members previously paid, and invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class members were damaged thereby.

40. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class, and it expressly is not intended to request any

recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

41. The joinder of the Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The Class can be identified through Defendant's records or Defendant's agents' records.

42. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to the Class predominate over questions which may affect individual Class members, including the following:

a) Whether, within the four years prior to the filing of the Complaint, Defendants or its agents made any call or sent any artificial or prerecorded voice message to the Class (other than a message made for emergency purposes or made with the prior express consent of the called party) using any automatic dialing system to any telephone number assigned to a cellular phone service;

b) Whether, within the four years prior to the filing of the Complaint, Defendants or its agents made any call or sent any artificial or prerecorded voice message to Sub-Class 1 (other than a message made for emergency purposes or made with the prior express consent of the called party) using any automatic dialing system to any telephone number assigned to a cellular phone service;

c) Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and

d) Whether Defendants and its agent/s should be enjoined from engaging in such conduct in the future.

43. As a person that received at least one autodialed call utilizing an ATDS without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the Class. As a person residing within Nevada that received at least one autodialed call utilizing an ATDS without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of Sub-Class 1. Plaintiff will fairly and adequately represent and protect the interests of the Class and Sub-Class 1 in that Plaintiff has no interests antagonistic to any member of the Class and Sub-Class 1.

44. Plaintiff and the members of the Class and Sub-Class 1 have all suffered irreparable harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class action, the Class and Sub-Class 1 will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendants will likely continue such illegal conduct. Because of the size of the individual Class

and Sub-Class 1 member's claims, few, if any, Class and Sub-Class 1 members could afford to seek legal redress for the wrongs complained of herein.

45. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

46. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendants to comply with federal and Nevada law. The interest of Class and Sub-Class 1 members in individually controlling the prosecution of separate claims against Defendants is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

47. Defendants have acted on grounds generally applicable to the Class and Sub-Class 1, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class and Sub-Class 1 as a whole.

First Cause Of Action
Negligent Violations Of The Telephone Consumer Protection Act
47 U.S.C. § 227 Et Seq.

48. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

49. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

50. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class are entitled to an award of $500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

51. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.

52. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

53. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

54. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class are entitled to an award of $1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

55. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION
VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT
NRS 598 ET SEQ. (NDTPA); AND NRS 41.600

56. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

57. The foregoing acts and omissions constitute numerous and multiple violations of the NDTPA. Defendants' conduct violated NRS 598.023(3) by violating the TCPA, a federal statute, in Defendants' attempt to collect on an alleged consumer debt, which was owed for goods and/or services.

58. Through each and every violation of the NDTPA, Defendants committed "consumer fraud" as defined in NRS 41.600(2)(e).

59. As a result of each and every violation of the NDTPA and act of "consumer fraud" by Defendants, Plaintiff and Sub-Class 1 are entitled to damages, pursuant to NRS 41.600(3)(a); any equitable relief that the court deems appropriate, pursuant to NRS 41.600(3)(b); and reasonable attorney's fees and costs pursuant to NRS 41.600(3)(c) from Defendant.

PRAYER FOR RELIEF

Plaintiff respectfully requests the Court grant Plaintiff and the Class and Sub-Class 1 members the following relief against Defendants, and each of them:

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First Cause of Action for Negligent Violation of the TCPA, 47 U.S.C. § 227 Et Seq.

- As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member $500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

Second Cause of Action For Knowing and/or Willful Violations of the TCPA, 47 U.S.C. § 227 Et Seq.

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member $1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

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THIRD CAUSE OF ACTION
VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT
NRS 598 ET SEQ. (NDTPA); AND NRS 41.600

- As a result of Defendants' violations of NRS 598 and NRS 41.600, Plaintiff seeks for herself and each Sub-Class 1 member, an award of actual damages, pursuant to NRS 41.600(3)(a), against Defendants;
- an award of costs of litigation and reasonable attorney's fees, pursuant to NRS 41.600(3)(c), against Defendants;
- injunctive relief prohibiting such conduct by Defendants in the future; and
- any other relief the Court may deem just and proper.

TRIAL BY JURY

60. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: March 12, 2014

Respectfully submitted,

BY: ______________________

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